



John E. Benedict
Senior Attorney

Federal Regulatory Affairs-LDD
401 9th Street, NW
Suite 400
Washington, DC 20004
Voice 202 585 1910
Fax 202 585 1897
jeb.e.benedict@mail.sprint.com

September 5, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Re: **Notice of Ex Parte Communication**

Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Ms. Dortch:

Yesterday, Dick Juhnke and I met on behalf of Sprint Corporation with Jordan Goldstein, advisor to Commissioner Copps.

Sprint stated that the Commission should reject American Public Communications Council requests that it excuse PSPs from their obligation to refund overpayments they received from IXC's. Sprint explained that APCC has wrongly claimed that IXC's over-recovered from end-users. During the "per-line" Interim Period, Sprint did not impose end-user surcharges for payphone-originated calls. During the "per-call" Intermediate Period, Sprint only gradually became able to identify payphone calls for end-user billing purposes as Flex-ANI was implemented. Although Sprint introduced a per-call surcharge effective October 12, 1997, it took time before Sprint could identify every payphone calls for surcharge purposes, even while paying PSPs for all those calls. In addition, Sprint's per-call surcharge -- when recovered at all -- was only 30¢. At just 1.6¢ above the rate payable to PSPs, the surcharge would not have recovered administrative costs of payphone compensation and the costs of bad debt even if it could have been applied to all compensable calls. Overall, Sprint *under-recovered*.

During the meeting, Sprint was asked whether there was language in a previous Commission order to the effect that IXC's were fully compensated in the period during which the 28.4¢ was in effect. Sprint believes the language referred to is ¶ 198 of the *Third Report and Order*, 14 FCC Rcd 2525 (1999). There, the Commission did not determine that IXC's were fully compensated. It made only the narrower point -- after finding that IXC's *were* entitled to recover past overpayments but should await such recovery until Interim Period compensation to PSPs is determined -- that IXC's had collected enough from customers that they would "not be substantially harmed by a *delay* in recovering their overpayment" (emphasis added).

Sprint added that the record already reflects that first switch IXC's were not over-compensated and received no windfall as a result of payphone compensation rate reductions ordered by the Commission. See Opposition of Sprint to Petition for Reconsideration at 7-9

(filed July 7, 1999). See also Letter from Teresa Marrero, AT&T to Marlene Dortch, Secretary (filed July 2, 2002); Letter from Teresa Marrero to Marlene Dortch at (filed Aug. 23, 2002).

Sprint also reiterated that the Commission should not use the RBOC estimates of compensable calls, provided to the Bureau earlier this year, for allocating payphone compensation for the Interim Period. If the Commission insists on doing so nevertheless, Sprint suggested allowing IXCs to reduce any resulting allocation percentage by the proportion of calls were routed to facilities-based resellers, based on 1998 data. Sprint provided a copy of an ex parte letter dated August 23, 2002 (attached) that outlined that issue and Sprint's proposal in somewhat more detail.

Pursuant to the requirements of Section 1.1206 of the Commission's rules, we are filing an electronic copy of this notice for addition to the docket.

Sincerely,



John E. Benedict

cc: H. Richard Juhnke
Matthew Brill
Jeffrey Carlisle
Jordan Goldstein
Daniel Gonzalez
Linda Kinney
Christopher Libertelli
Joel Marcus
Lynne Milne
Tamara Preiss
Lenworth Smith
Jon Stover



John E. Benedict
Senior Attorney

Federal Regulatory Affairs-LDD
401 9th Street, NW
Suite 400
Washington, DC 20004
Voice 202 585 1910
Fax 202 585 1897
jeb.e.benedict@mail.sprint.com

August 23, 2002

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Room TWB-204
Washington, DC 20554

Re: Notice of Ex Parte Communication

Implementation of the Pay Telephone Reclassification and Compensation
Provisions of the Telecommunications Act of 1996
CC Docket No. 96-128

Dear Ms. Dortch:

Yesterday, Dick Juhnke and I met on behalf of Sprint Corporation with Matthew Brill of Commissioner Abernathy's office.

Sprint explained that the RBOC estimates of compensable calls, provided to the Bureau earlier this year,¹ are not a proper basis for allocating payphone compensation for past periods. Not only are those estimates unreliable and incomplete, and not only have their methodologies not been aired or critically examined, they also appear unlawfully to assign to first-switch interexchange carriers many of the calls that belong to facilities-based resellers. Such FBRs accounted for 25% or more of payphone-originated traffic on Sprint's network during the Interim and Intermediate Periods. At least two of the RBOCs even cautioned the Bureau against relying on such estimates for allocation purposes.²

Sprint reiterated its position, outlined in its petition for reconsideration of the *Fourth Order on Reconsideration and Order on Remand* (FCC 02-22),³ that instead of adopting arbitrary and unreliable estimates, the Commission should use actual IXC data from the period immediately following the Interim Period as the fairest and most accurate way to both calculate and allocate Interim Period compensation. Intermediate Period compensation true-ups for carriers that paid on a per-call basis during that period should be calculated by simply adjusting for the lower lawful per-call charge adopted in the *Fourth Order*. We also emphasized that any

¹ Letter from Whit Jordan, BellSouth, to William Caton, Acting Secretary (Mar. 29, 2002); Letter from James Hannon, Qwest, to William Caton (Mar. 14, 2002); Letter from D. Michael York, SBC, to Magalie Salas, Secretary (Jan. 22, 2002); Letter from Marie Breslin, Verizon, to Magalie Salas (Jan. 22, 2002).

² Letter from James Hannon, Qwest, to Jeffrey Carlisle, Common Carrier Bureau (Jan. 22, 2002) at 1; Letter from Marie Breslin, Verizon, to Magalie Salas, Secretary (Jan. 22, 2002) at 1.

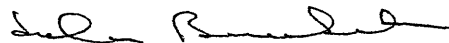
³ Sprint Corporation's Petition for Reconsideration and Clarification (Apr. 3, 2002).

allocation process that assigns to first-switch IXC's the payphone obligations of other carriers would be unlawful in light of the D.C. Circuit's decision in Illinois Public Telecommunications Ass'n v. FCC.⁴

Sprint added that, if the Commission insists on using these RBOC estimates for allocating payphone compensation during the Interim Period, it should expressly allow a first-switch IXC to subtract from its allocation any calls that its actual data for a proximate period⁵ show were routed to facilities-based resellers, so long as it provides PSPs with the percentage of calls routed to each facilities-based reseller, together with the name, contact person, and last known address and telephone number for the FBR to which it routed the call.⁶ Thus, for example, if a particular IXC were allocated a 20% share of total payphone compensation using the RBOC estimates and could show, using 1998 data, that it handed off 25% of its payphone-originated calls to FBRs, and could break down this percentage among those FBRs, it would have to pay Interim Period compensation based only on 75% of the allocation derived from the RBOC data, or 15% of the total.

Pursuant to the requirements of Section 1.1206 of the Commission's rules, we are filing an electronic copy of this notice for addition to the docket.

Sincerely,



John E. Benedict

cc: H. Richard Juhnke
Matthew Brill
Jeffrey Carlisle
Jordan Goldstein
Daniel Gonzalez
Linda Kinney
Christopher Libertelli
Joel Marcus
Lynne Milne
Tamara Preiss
Lenworth Smith
Jon Stover

⁴ 117 F.3d 555 (D.C. Cir. 1997), clarified on reh'g, 123 F.3d 693 (D.C. Cir. 1997), cert. denied sub. Nom Virginia State Corp. Comm'n v. FCC, 523 U.S. 1046 (1998).

⁵ Since first-switch IXC's were not obligated to track payphone-originated calls on a per-call basis during the Interim Period, data for 1998 should be deemed to be sufficient for this purpose.

⁶ Under this alternate approach, IXC's actually would provide more than the law requires. As the Commission acknowledged in Bell Atlantic-Delaware, Inc. v. MCI Telecommunications Corp., FCC 02-223 (rel. Aug. 14, 2002) at ¶¶ 9-11, before November 23, 2001, first-switch IXC's had no obligation to provide call tracking for calls handed off to facilities-based resellers.